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Supreme Court of the United States

OCTOBER TERM, 1954

No. 130

INTERNATIONAL HARVESTER COMPANY,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

Appeal from the Supreme Court of the State of Minnesota

PETITION FOR REHEARING ON DISMISSAL OF APPEAL

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To the Above Named Court:

On October 18, 1954, the Court filed an order dismissing the appeal herein for want of a substantial federal question.

It is assumed that the rule by which the presence of a substantial federal question was determined is that stated by this Court in *California Water Service Co. v. City of Redding*, 304 U.S. 252, as follows:

> "Had the decisions in the cases of Alabama Power Co. v. Ickes, 302 U.S. 464, ante 374, 58 S.Ct. 300, supra, and of Duke Power Co. v. Greenwood County, 302 U.S. 485, ante 381, 58 S.Ct. 306, been rendered prior to the filing of the bill of complaint in the instant case, no substan-

tial federal question would have been presented. The lack of substantiality in a federal question may appear either because it is obviously without merit or because its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject. Levering & G. Co. v. Morrin, 289 U.S. 103, 105, 106, 77 L.ed. 1062, 1064, 1065, 53 S.Ct. 549. And, here, although the bill of complaint had been previously filed, and a motion for an interlocutory injunction presented, it was apparent after our decisions in the cases cited that the federal question was without substance and it became the duty of the District Court to dismiss the bill of complaint upon that ground." (p. 255.)

Since the only cases in which so-called pay-while-voting statutes have been the subject of review and decision by this Court are *Day-Brite Lighting, Inc., v. State of Missouri*, 342 U.S. 421, and *Tidewater Associated Oil Co. v. Robison*, 344 U.S. 888, it is also assumed that the dismissal is based upon the misconception that the decisions in those cases, and particularly the *Day-Brite* case, are controlling and foreclose further consideration of the case at bar.

The present appeal is not governed by either of the cited cases, but is distinguishable on the facts and on the specific constitutional questions presented.

ACCORDINGLY, APPELLANT HEREBY PETITIONS THIS COURT FOR A REHEARING ON THE ISSUE OF WHETHER A SUBSTANTIAL FEDERAL QUESTION IS PRESENTED, AND PRAYS FOR THE REINSTATEMENT OF THE APPEAL AND A DETERMINATION THEREOF UPON THE MERITS, ALL UPON THE GROUNDS HEREINAFTER STATED:

I.

STATUTES INVOLVED

Section 206.21, *M.S.A.*, is directed against every employer of employees entitled to vote in the State of Minnesota, and this includes individuals, partnerships and associations or corporations as well as their officers and agents. This statute, in conjunction with Sections 210.11 and 610.19, *M.S.A.*, has widespread application and its effect is of paramount importance to all persons affected thereby. (S.J. 10, 11-15, 19.)[1]

The nature and history of the action here involved, the charge against appellant, the judgment of conviction, and the affirmance of the judgment by the Supreme Court of Minnesota, are shown at pages 5 to 9 of the Statement of Jurisdiction.

The short facts upon which the judgment of conviction was based appear at pages 18 and 19 of the Statement of Jurisdiction.

As a "person" who is directly and adversely affected and injured, and as a member of the class of persons whose rights are also directly affected by Section 206.21, in conjunction with Sections 210.11 and 610.19, *M.S.A.*, appellant may attack the constitutionality of the statutes, under the Constitution of the United States, as to all matters wherein it is directly affected, as well as those affecting the class of employers to which it belongs (S.J. 14-15).

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[1]Numerals appearing in parenthesis after the letters S. J. refer to the page or pages of appellant's Statement of Jurisdiction.

II.

PRIOR DECISIONS RELATING TO PAY-WHILE-VOTING STATUTES DISTINGUISHABLE AND NOT CONTROLLING

The case at bar cannot be disposed of by application of the principles announced in either the case of *Day-Brite Lighting, Inc., v. Missouri*, 342 U.S. 421, or in the case of *Tidewater Associated Oil Company v. Robison*, 344 U.S. 804, 344 U.S. 888, involving pay-while-voting statutes of other states, which are the only cases of this type decided by this Court.

Unlike the Missouri statute, as it is characterized by the Court in the *Day-Brite* case, Section 206.21 was not designed to "end the coercion of employees by employers in the exercise of the franchise." That phase of the exercise of the franchise is fully covered and protected by other sections of the Minnesota statutes (S.J. 42-44). Nor is the Minnesota statute a wage law. It does not attempt to regulate maximum or minimum wages or hours of labor (if it did, the same vice of inequality would be present). It has, on the contrary, for its objective the inducing of employees to vote whose hours of work conflict with the hours the polls are open, by granting them specified privileges, as its language makes clear. It provides that:

> "Every employee entitled to vote at an election shall be permitted to absent himself from his work for that purpose *during the forenoon* of each election day, without a penalty or deduction from salary or wages on account of such absence." (Italics supplied.)

and imposes upon the employer the implied promise (resulting from the principle that valid regulatory statutes must be read into and form a part of every contract to which they relate, superseding inconsistent provisions) to pay full wages to the employee to whom the statute applies.

The normal type or pattern of pay-while-voting statutes usually impose the burden on employers of subsidizing the

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voting of their employees entitled to vote by being compelled to allow them time off from work to vote and to pay them for such time though no services are performed during such period. On the other hand, under Section 206.21, some employees, but not all, are given a bonus for voting, notwithstanding the fact that voting is a privilege to be exercised by each voter as best he can and without reward.

In the *Day-Brite* case this Court held, basically, that it would leave to the discretion of local legislatures the wisdom of enacting this experimental type of legislation, and refused to consider the question as one within the purview of the due process and equal protection clauses of the Fourteenth Amendment and the Contract Clause of Article 1, Section 10, of the Constitution of the United States. It appears clear, however, that in doing so the Court did not consider or decide the new and different question presented by this appeal. The Court said:

> "The only semblance of substance in the constitutional objection to Missouri's law is that the employer must pay wages for a period in which the employee performs no services. Of course, many forms of regulation reduce the net return of the enterprise; yet that gives rise to no constitutional infirmity. See Queenside Hills Realty Co. v. Saxl, 328 US 80, 90 L.ed. 1096, 66 SCt. 850; California State Auto. Asso. Inter-Insurance Bureau v. Maloney, 341 US 105, 95 L.ed. 788; 71 SCt. 601, supra. Most regulations of business necessarily impose financial burdens on the enterprise for which no compensation is paid. Those are part of the costs of our civilization. Extreme cases are conjured up where an employer is required to pay wages for a period that has no relation to the legitimate end. Those cases can await decision as and when they arise. The present law has no such infirmity. It is designed to eliminate any penalty for exercising the right of suffrage and to remove a practical obstacle to getting out the vote. The public welfare is a broad and inclusive concept. The moral,

> social, economic, and physical well-being of the community is one part of it; the political well-being, another. The police power which is adequate to fix the financial burden for one is adequate for the other. The judgment of the legislature that time out for voting should cost the employee nothing may be a debatable one. It is indeed conceded by the opposition to be such. But if our recent cases mean anything, they leave debatable issues as respects business, economic, and social affairs to legislative decision. We could strike down this law only if we returned to the philosophy of the Lochner, Coppage and Adkins cases." (pp. 424-425.)

The Court was not called upon, as it is in this case, to weigh any question of unequal treatment of affected parties of the same class. Unlike the Minnesota statute, the statute of Missouri extended its benefits and imposed its burdens on the basis of equality of treatment as between employees on the one side and employers on the other. The *Tidewater* case involved a California pay-while-voting statute, which likewise accorded equal treatment to employees receiving the benefits thereof and imposed equal burdens upon employers affected thereby, and hence did not involve the questions that are paramount on this appeal. That case was summarily disposed of by the granting of a motion to affirm the judgment of the Court below which had held that the word "necessary" could not be read into the statute in relation to the time off granted employees to vote.

The important distinction between those cases and this appeal is that the challenged phase of the compulsory subsidy, imposed by Section 206.21, not upon all employers, but only upon employers of employees who absent themselves from their work in the forenoon of an election day, goes far beyond the normal pattern of pay-while-voting statutes under consideration in the *Day-Brite* and *Tidewater* cases.

In neither of the two cited cases was there involved, as in the case at bar:

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1st. A challenge to the constitutionality under the provisions of the Fourteenth Amendment that no state shall "deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," on the ground that

(1) The statute under review, by designating for its benefits only forenoon employees entitled to vote at an election, discriminates against, and accords partial and unequal treatment to, members (employees on the one hand and employers on the other) of the same class, all of whom in their respective classes are in the same or similar circumstances in relation to voting by such employees (i.e., a conflict in varying degrees exists between the hours of employment and the hours during which the polls are open for voting), thus not only removing the statute from the category of a public purpose enactment but constituting it a private or special privilege grant, or bonus, for the benefit of "forenoon" employees only, and consequently fundamentally unconstitutional and void as class legislation.

(2) The Minnesota Supreme Court erred by splitting the declared and natural classification for accomplishing the objective (to induce voting by all employed persons) of Section 206.21, viz., "every employee entitled to vote at an election," into two parts and applying different regulations to the dissevered portions. In other words, the Court used the portion of the statute which granted the benefits or bonus to the "forenoon" employees as the basis for splitting the natural and declared classification as if it applied only to forenoon employees and on that theory determined that the constitutional provisions above referred to were not violated. This, appellant contends, was an improper and invalid classification.

See, for details, subdivisions III and IV hereof.

2nd. A challenge to constitutionality under that portion of the Fourteenth Amendment which forbids States to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States (included in which is the right of individuals to freedom of contract) on the ground:

> Did the Minnesota Supreme Court err in holding that Section 206.21 is not violative of Article 1, Section 12, of the Constitution of the State of Minnesota, prohibiting imprisonment for debt; that a provision in an employment contract that employees shall be allowed the necessary time off *without pay* to vote in any Federal State or Municipal election (S.J. 18) is invalid, and that employees entitled to the benefits of the statute cannot waive them; and, hence, the subsidy imposed by said statute upon employers is not violative of the Fourteenth Amendment forbidding States to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States?

The matters embraced in the foregoing statement and questions present important and substantial federal questions relating to the constitutionality of Section 206.21 that were not involved in and are not foreclosed by the prior decisions of this Court.

III.

LEGISLATIVE HISTORY

In Minnesota the polls are open from seven o'clock in the morning until eight o'clock in the evening. Practically all employed persons entitled to vote find some conflict between their working hours and the hours the polls are open. Since voting is a personal privilege, each may choose the time that suits him. *State v. Erickson*, 119 Minn. 152, 137 N.W. 385; *United States v. Bathgate*, 246 U.S. 220, 227.

There are two naturally affected groups or classes involved. One class consists of employees entitled to vote whose hours of employment conflict in some degree with the hours the polls are open. Each member of this class is consequently in the same or similar circumstances as the other members in relation to voting. This class will be referred to as "affected employees." The other class consists of the employers of such employees entitled to vote whose hours of employment in some degree conflict with the hours the polls are open. Each member of this class is consequently in the same or similar circumstances as the other members in relation to voting by their employees. This class will be referred to as the "affected employers."

To induce the affected employees to vote, *General Statutes of Minnesota 1894*, Section 114, provided that "by obtaining permission" as therein provided, any person entitled to vote at any general or special election "shall be allowed time off from any service or employment and such voter shall not, because of so absenting himself, be liable for any penalty, nor shall any deduction be made on account of such absence from his usual salary or wages." Violation was declared a misdemeanor and punishable as such.

Laws of Minnesota 1901, Chapter 241, created a Commission to codify the general laws, not as a new body of laws but

as a rearrangement and restatement of the previously existing general statutory law of the State, with such amendments as the Commission and the Legislature deemed advisable.

The Commission recommended and the Legislature approved and enacted *Revised Laws of Minnesota 1905*, Section 283 of which revised Section 114, *General Statutes of Minnesota of 189½*, to read as follows:

> "Every employee entitled to vote at a general or city election shall be permitted to absent himself from his work for that purpose during the forenoon of each election day, without a penalty or deduction from salary or wages on account of such absence."

Except for an amendment changing the words, "general or city election" to "an election," Section 283 is identical with the present Section 206.21, *M.S.A.*

In the 1905 revision of Section 114 of the 1894 General Statutes, there was enacted as Section 371, without change, the provision now appearing as Section 210.11, *M.S.A.*, as follows:

> "*Every person* who as principal or as an official or agent of any other person, shall directly or indirectly refuse, abridge, or in any manner interfere with any of the election privileges or immunities of any employee of himself or his principal shall be guilty of a misdemeanor."

Throughout all of this period Section 610.19, *M.S.A.*, was in effect and provided that misdemeanors such as declared by Section 210.11

> "be punished by imprisonment in the county jail for not more than three months, or by a fine of not more than $100.00."

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IV.

SECTION 206.21, M.S.A., IS FUNDAMENTALLY INVALID AS CLASS LEGISLATION AND VIOLATIVE OF THE FOURTEENTH AMENDMENT

1. Governing Principles of Classification.

Regulatory statutes necessarily involve classification, and it is a cardinal rule that classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced should be treated alike.

F. S. Royster Guano Co. v. Virginia, 253 U.S. 412;

Old Dearborn Distributing Co. v. Seagram Distillers Corporation, 299 U.S. 183;

State of South Carolina ex rel. Phoenix Ins. Co. v. McMasters, 237 U.S. 63, 78.

The Fourteenth Amendment, in declaring that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, intended that there should be no spoliation of property, but that *equal protection and security should be given to all under like circumstances* in the enjoyment of their personal and civil rights; and all persons should be equally entitled to pursue their happiness and acquire and enjoy property.

Barbier v. Connolly, 113 U.S. 27.

Equal protection of the laws is something more than an abstract right; it is *a command* which the State must respect, *the benefits of which every person may demand.*

Hill v. Texas, 316 U.S. 400.

The purpose of the clause is to rest the rights of all persons upon the *same rule under similar circumstances.*

Frost v. Corporation Commission, 278 U.S. 515;

Claybrook v. City of Owensboro (D.C. Ky. 1883), 16 Fed. 297.

Statutes *must not be discriminatory between members of the same class.* Such discrimination constitutes a denial of equal protection of the law.

Glicker v. Michigan Liquor Control Commission (C.C.A. 6), 160 F.2d 96, 99;

Cotting v. Kansas City Stock Yards Company, 183 U.S. 79;

Hartford Steam Boiler Inspection & Ins. Co. v. Harrison, 301 U.S. 459;

Carleton Screw Products Co. v. Fleming (C.C.A. 8), 126 F.2d 537, 541.

The history of Section 206.21, set forth above, shows that the objective of the statute was to induce voting by "every employee entitled to vote at an election," and that the class of employees embraced in that designation were those whose hours of employment (though variable in different occupations having different work shifts) conflicted with the hours during which the polls were open for voting. Each member of the class was thus in the same or similar circumstances in relation to voting.

It has been pointed out that each affected employee was, because of the conflict of time, compelled of necessity to choose one of several courses of procedure in relation to voting.

In view of this situation the affected employees, i.e., "every employee entitled to vote at an election," constituted a natural, reasonable and logical basis of classification for the desired objective of inducing such employees to vote.

However, in the process of codifying the statutes in 1905, the Minnesota Legislature, by inadvertence or otherwise,

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failed to grant impartial and equal treatment, as required by the Constitution, to each affected employee, but accorded discriminatory treatment to members of the same class by limiting the privilege or bonus granted by the statute *to forenoon employees* only, denying it to all of the other affected employees whose work period did not embrace the forenoon of an election day.

Conversely, the statute classified the affected employers as employers of employees entitled to vote at an election, and accorded discriminatory treatment to affected employers of forenoon employees by compelling them to subsidize the voting of only their forenoon employees who absented themselves to vote in the forenoon of an election day and relieving all other affected employers of the subsidy burden.

Hence, both from the standpoint of affected employees and from the standpoint of affected employers, each of whom in the respective class to which he belonged was in the same or similar circumstances in relation to voting by the employees, the statute was discriminatory, unreasonable, partial and unequal in the treatment accorded to the members of the respective classes.

2. Section 206.21, M.S.A., Fails of a Public Purpose and Grants a Special Privilege or Bonus to Forenoon Employees Only.

It is elementary that a statute which is partial, and arbitrarily accords unequal treatment to members of the same class, each of whom is in the same or similar circumstances, does not fulfill the requirements of a valid public or general welfare purpose.

That the statute will not accomplish the purpose of inducing "every employee entitled to vote at an election" to do so by favoring the forenoon employees and denying its privileges to all other affected employees is obvious. To avoid loss of pay the latter will in all probability vote at some

time before or after working hours during the thirteen hours the polls are open, or refrain from voting.

The same procedure is open to forenoon workers but, these workers will in all probability take advantage of the special privileges granted them alone.

The ostensible purpose of the statute to induce "every employee entitled to vote at an election" to do so, is not accomplished by the device of granting a special privilege or bonus to the "forenoon" portion of the affected employees class.

3. Classification Misinterpreted and Erroneously Split.

The Minnesota Supreme Court, in finding no discriminatory or unequal treatment accorded affected employees (S.J. 70-71), erroneously interpreted Section 206.21 as if the forenoon employees to whom the statute grants the privilege, constituted the class instead of conforming to the express statutory classification, viz., "every employee entitled to vote," to whom the privileges or bonuses must have been extended if impartial and equal treatment were to be applied. This is indicated by the Court's recognition of the rule that "class legislation, discriminating against some and favoring others, is prohibited," and its declaration that

> "legislation which, in carrying out a public purpose, is not prohibited * * * if, within the sphere of its operation, it affects all persons similarly situated and the classification is not arbitrary." (S.J. 72.)

Earlier in its decision the Court attempted to meet the objection that Section 206.21 offended the equality and due process provisions of the Fourteenth Amendment because it applied only to forenoon employees by saying:

> "Of course, the legislative judgment was exercised here when these statutes were adopted, and the members of the legislature no doubt took the view that those who did not work forenoons would have ample opportunity to vote then; that those on daytime shifts would be suf-

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ficiently aided in freely exercising the voting franchise by limiting time off for voting without penalty or pay deduction to the forenoon of election day; and that no greater burden need be placed upon the employer than this to protect the right of suffrage and guard and promote the general welfare." (S.J. 72.)

The Court is merely conjecturing as to what prompted the change from the prior law, and does not face the stronger probability that the 1905 codification commission and the Legislature made an error in introducing into the statute the partial and unequal treatment of affected employees in the same or similar circumstances as regards voting, in that each found his hours of employment conflicting with some of the five forenoon hours and the eight afternoon hours the polls were open.

For the Court to assume or conjecture that "the members of the Legislature no doubt took the view that those who did not work forenoons would have ample opportunity to vote then," ignoring the opportunity of those who did not work afternoons, does not alter the Legislature's choice of language whereby it expressly classified those to be benefited by the special privilege or bonus as "every employee entitled to vote at an election," and those against whom the burden imposed by the statute is directed as "the employer of every employee entitled to vote at an election."

It is clear from the authorities cited that to interpret Section 206.21 by ignoring its plainly declared and natural classification of employees as "every employee entitled to vote at an election," and forcing a construction as if the statute read

> "Every employee entitled to vote at an election who is employed in the forenoon, but no others, shall be permitted to absent himself from his work for that purpose during the forenoon of each election day, without a penalty or deduction from salary or wages on account of such absence."

is not only judicial legislation but is violative of the elementary rule against splitting a natural classification in two parts or fractions and then arbitrarily designating the dissevered fractions of the original unit as two classes and enacting different rules for the government of each.

Fountain Park Company v. Hensler, 199 Ind. 95, 155 N.E. 465.

4. Prior Decisions Distinguished.

The basic defect in Section 206.21, both as written and as constructed, is not within the pattern of either the *Day-Brite* case or the *Tidewater* case. It has the inherent elements of invalidity, whereas the statutes considered in the cases cited had the normal pattern of equality of treatment of affected parties, both employers and employees. The decision in the *Day-Brite* case granted a bonus to employees, conversely compelled employers to subsidize the voting of their employees, and declared in effect that this would not be deemed a federal question under the Fourteenth Amendment but was a local legislative problem. The case at bar, however, presents fundamental and substantial federal questions that are not within the pattern of, and are not foreclosed by, the matters disposed of by those cases.

V.

OTHER ISSUES

The Minnesota Supreme Court abridged the freedom of contract protected by Section 1 of the Fourteenth Amendment by invalidating the waiver of the bonus contained in the contract of employment.

A statute granting a privilege or bonus to part of a class is not a public purpose statute. The bonus was neither a tax nor a fine and did not inure to the benefit of the state. It was a private benefit and, under elementary principles, sub-

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ject to waiver. Every forenoon worker waives the benefit when he votes during working hours in the afternoon or evening, or votes out of working hours, or votes not at all. The only difference is that here the waiver was effected by contract in advance. (S.J. 18, 25-33.)

The Minnesota Supreme Court also erred in refusing to hold that Sections 206.21, 210.11 and 610.19 provide for imprisonment for debt in violation of Article 1, Section 12, of the State Constitution. (S.J. 19-22, 23-35.)

Section 210.11 makes it a misdemeanor, punishable by imprisonment under Section 610.19, for an employer to "refuse, abridge, or in any manner interfere with any of the election privileges or immunities of any employee." Appellant did not interfere with the employee's absenting himself for two hours in the forenoon of an election day to vote (S.J.18). The complaint charged that appellant abridged and interfered with the employee's election privileges in that it did "deduct from the wages" of the employee $3.50 (S.J. 5). Thus the offense consists of refusing to pay a debt in the form of money claimed to be due the employee, and thus the statutes provide that such refusal be punished by imprisonment (S.J. 19-22). That violates the prohibition against imprisonment for debt. (See *Meyer v. Berlandi*, 39 Minn. 438, 40 N.W. 513). Whether a corporation can be imprisoned for debt or not (see *State v. Prudential Coal Company*, 130 Tenn. 275, 170 S.W. 56), a statute applicable to both individuals and corporations in like circumstances, which is unenforceable as to one because of constitutional restrictions, can not be enforced against the other. (See *Barrows v. Jackson*, 346 U.S. 249, 255-256.)

If the Minnesota Supreme Court had held that the employee's waiver of the privilege to absent himself without loss of pay was effectual, no federal question would be presented. This is also true had the Court held Section 206.21

invalid under Article 1, Section 12, of the Minnesota Constitution. The contrary holdings give rise to questions under the Constitution of the United States, and on those questions, as well as questions under the State Constitution, such as those discussed under this heading, the decisions of the State Courts are not controlling. Particularly is this so when, as in the case at bar, the rights of the parties under the employment contract (dated January 2, 1951) (S.J. 66) arose prior to any decision of the Minnesota Supreme Court as to the validity under the State Constitution of the statute here involved.

Burgess v. Seligman, 107 U.S. 20, 33;
Coombes v. Getz, 285 U.S. 434, 441;
Great Southern Fire Proof Hotel Co. v. Jones, 193 U.S. 532, 542-548.

It is respectfully submitted that the order of dismissal should be vacated and the appeal reinstated.

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CERTIFICATE OF COUNSEL

The undersigned states that the foregoing petition for a rehearing in relation to the dismissal of the appeal in the above entitled cause is presented in good faith and not for delay.

G. Aaron Youngquist,
Attorney for Appellant.